

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ASSOCIATED ENERGY GROUP, INC.,
Plaintiff,

v.

EVERGREEN INTERNATIONAL
AIRLINES, INC.,
Defendant.

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CASE NO. 4:12-CV-01668

NOTICE OF REMOVAL

Defendant Evergreen International Airlines, Inc. (“Evergreen”), by and through its undersigned counsel of record, files this Notice of Removal of Action (“Notice of Removal”) pursuant to 28 U.S.C. §§ 1332(a), 1441(b) and 1446 and Local Civil Rule 81, to remove this civil action, and all claims and causes of action therein, from the 270th Judicial District Court of Harris County, Texas, where it was filed as Cause No. 2012-26434, to the United States District Court for the Southern District of Texas. Evergreen hereby reserves all defenses and rights available. As grounds for removal, Evergreen respectfully submits as follows:

I. STATE COURT ACTION

Plaintiff filed a civil action in the 270th Judicial District Court of Harris County, Texas styled *Associated Energy Group, Inc. v. Evergreen International Airlines, Inc.*, Cause No. 2012-26434 (the “State Court Action”), on or about May 7, 2012. Plaintiff alleges that it provided jet fuel to Evergreen and that Evergreen is liable to Plaintiff for an outstanding balance due of \$488,279.39, exclusive of interest. (Pet. ¶¶ 5-7.) Plaintiff served Evergreen on May 14, 2012.

Pursuant to 28 U.S.C. § 1446(a) and Local Civil Rule 81, the following documents are attached as Exhibits 1 through 4: (1) a completed civil cover sheet; (2) an index of all documents

filed in the State Court Action that clearly identifies each document and indicates the date on which the document was filed in the state court; (3) a copy of the docket sheet in the State Court Action; and (4) a separately signed Disclosure Statement that complies with Rule 7.1 of the Federal Rules of Civil Procedure. No other process, pleadings or orders had been served upon Evergreen in this matter at the time it filed this Notice of Removal.

Evergreen timely filed this Notice of Removal pursuant to 28 U.S.C. § 1446(b) within 30 days of its initial receipt of the Petition. The 30-day removal time period commenced, at the earliest, on May 14, 2012 (the date Evergreen actually received the Petition). *See* 28 U.S.C. § 1446(b); *Monterey Mushrooms, Inc. v. Hall*, 14 F. Supp. 2d 988, 991 (S.D. Tex. 1998).

II. JURISDICTION AND VENUE

This Court has jurisdiction over this action by reason of diversity of citizenship pursuant to 28 U.S.C. §§ 1332(a) and 1441(b).

Plaintiff has alleged that it is a Texas corporation located in Houston, Texas. Plaintiff is a citizen of the State of Texas.

Defendant Evergreen is now, and was at the time the State Court Action was commenced, a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in McMinnville, Oregon. Evergreen is a citizen of the State of Oregon. The Petition alleges that Evergreen is a foreign corporation. (Pet. ¶ 2.)

Based upon allegations in the Petition that Evergreen has an outstanding balance owed to Plaintiff of at least \$488,279.39, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of \$75,000.

Removal to this judicial district and division is proper under 28 U.S.C. § 1441(a) because this district and division embrace Harris County, the place where the State Court Action is pending.

III. NOTICE

Evergreen has filed or will file a notice of removal in the 270th Judicial District Court of Harris County, Texas on the same date this Notice of Removal was filed with this Court.

IV. COUNSEL OF RECORD

Counsel of record are as follows:

ATTORNEY FOR PLAINTIFF
ASSOCIATED ENERGY GROUP, INC.:

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ATTORNEY FOR DEFENDANT
EVERGREEN:

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V. CONCLUSION

Removal of the State Court Action is proper under 28 U.S.C. § 1441 because it is a civil action brought in a state court. The federal district courts have original jurisdiction pursuant to 28 U.S.C. § 1332 because the plaintiff and Defendant are diverse in citizenship and the amount in controversy exceeds \$75,000.

WHEREFORE, Evergreen, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, removes this action for trial from the 270th Judicial District Court of Harris County, Texas to this Court, on this 4th day of June, 2012.

Dated: June 4, 2012.

Respectfully submitted,

/s/ Daniel E. Bolia

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*Attorney-in-charge for Defendant Evergreen
International Airlines, Inc.*

CERTIFICATE OF SERVICE

I certify that on June 4, 2012, a true and correct copy of the foregoing document was served on the following counsel by hand delivery.

Robert J. Kruckemeyer
800 Commerce Street
Houston, Texas 77002

*Attorney for Plaintiff
Associated Energy Group, Inc.*

/s/ Daniel E. Bolia

Daniel E. Bolia